IN THE UTAH COURT OF APPEALS

Angela Segota **Plaintiff/ Appellant** **vs.** **Young 180 Co.** **Nationwide Mutual Insurance Co.** **Defendants/ Appellees**	**Case No. 20190253-CA** **An Appeal of the Decisions of The Honorable Michael Edwards** **Second District Court** **Civil No. 180700133 CN**

Appellant's Reply Brief

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Appellant Segota replies to the Appellees' Brief as follows:

1. Rule 26(d)(4) Clearly States That There Should be no Penalty If the Disclosures Being Late Was "Harmless"

> "URCP (d)(4) If a party fails to disclose or to supplement timely a disclosure ... that party may not use the undisclosed witnesses, document or material ... unless the failure is harmless ..."

The belated disclosure of Mrs. Segota's initial diclosures was harmless because Defendant Young 180 admitted that its own belated disclosures were identical to Mrs. Segota's disclosures.[1]

This is not the case where previously unknown damages calculations, expert witness designations and/or reports, and the like, are disclosed late.[2]

The belated disclosure in this case was in fact harmless because the Appellees already had all of that information. There was no surprise. There was no harm. There should have been no penalty.

2. Rule 26(d)(4) Clearly States That There Should be no Penalty If Good Cause for the Disclosures Being Late Was Shown

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[1]Young 180's counsel, Nicholas Hart, made the following critical admission during oral argument: "No, your Honor. The initial disclosures that were provided by both parties are identical. I mean, it's -- it's -- as mentioned, it's not a terribly document-extensive case, with one contract, with other information that's provided in these initial disclosures." R. 192, lines 14-18

[2]Which is the case in each case cited by the Appellees ... which are all therefore inapposite. There is no case which states that there is harm from belated disclosure of information which was already in the possessions of the opposing party(ies).

> "URCP (d)(4) If a party fails to disclose or to supplement timely a disclosure ... that party may not use the undisclosed witnesses, document or material ... unless ... the party shows good cause for the failures."

Although Mrs. Segota's memoranda did not emphasize this point, Mrs. Segota did show good cause for the belated disclosures.

3. It Is Telling That Mrs. Segota's (a) Motion to Amend Scheduling Order and (b) Motions for Enlargement Were All Unopposed as of The Date of Oral Argument

The facts are undisputed that Mrs. Segota's (a) Motion to Amend Scheduling Order and (b) Motions for Enlargement were all unopposed as of the date of oral argument.

They all should have been granted as being unopposed.

When the Motion to Amend Scheduling Order was filed, both Mrs. Segota and the dealership – Young 180 – had not yet filed their initial disclosures. The Motion to Amend Scheduling Order was filed to enable all parties time to file their belated initial disclosures and then to conduct appropriate discovery.

Mrs. Segota filed several motions for enlargement of time to file oppositions to the Appellees' motions for summary judgment. Each of these motions detailed the "good cause" which justified each requested enlargement.

The Trial Court acknowledged that Mrs. Segota's motions each showed good cause:

> "I would say that plaintiff's counsel had good cause, perhaps, for requesting extensions for his filing a response to the motion[s] ...."

Since Mrs. Segota's motions each admittedly showed good cause for the requested extensions, it was an abuse of discretion to deny them in the way that the Court did.

It is true that Mrs. Segota did not filed Notices to Submit with respect to each. Mrs. Segota did not feel like she needed to because the Defendants/ Appellees did not oppose the motions.

Certainly, at Oral Argument, via the parties' briefing, the Trial Court was fully aware of (a) the motions, (b) the good cause which had been shown, (c) that the Defendants/ Appellees had not opposed the motions – and (d) that Mrs. Segota was asking the Court to, at that hearing, grant said unopposed, fully justified motions for enlargement.

Under these circumtances, the Trial Court's ruling really doesn't make sense, was not fair and was an abuse of discretion.

4. The Trial Court's Ignorance With Respect to the Definition and Common Usage of the Adjective "Feckless" Seems To Have Resulted In a Fatal Bias Against Mrs. Segota and Her Counsel

The Appellees attempt to argue that the Trial Court's sharp and somewhat emotional criticism of Mrs. Segota's counsel's use of "feckless" to describe some

of the Appellees' arguments did not suggest any bias toward Mrs. Segota and/or her counsel.

The Appellees argument is — quite frankly — feckless ... i.e., "weak, ineffective."

The Court did not "generally" remind counsel that they should be civil with each other.

What actually occurred is described accurately in Mrs. Segota's opening brief.

5. The Appellees Fail To Adequately Address The Holding in *HCG Platinum, LLC v. Preferred Prod. Placement Corp*., 873 F.3d 1191, 1206 (10th Cir. 2017)

Appellees acknowledge the *HCG Platinum LLC* case, but then – without any real analysis – shift over to the text of Rule 26 and quote again the cases in which – where critically important and previously unknown information was belatedly disclosed -- sanctions were imposed.

The Appellees' analysis is unhelpful and essentially demonstrates that they have no real argument against the sound analysis and rationale set forth in the *HCG Platinum LLC* case.

Certainly the Appellees do not offer any Utah case law which clearly addresses and distinguishes, criticizes and/or refuses to follow the policies and

principles outlined in the *HCG Platinum LLC* case.

The following language in the *HCG Platinum LLC* case (a) is well-reasoned, (b) is based on sound equitable principles, and (c) furthers the policies in this State which emphasize the desirability of deciding matters on their merits, etc.:

> "[T]he court should consider the following factors: (1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability of the party to cure the prejudice; (3) the extent to which introducing such testimony would disrupt the trial; and (4) the [proffering] party's bad faith or willfulness.' *Jacobsen v. Deseret Book Co.*, 287 F.3d at 953 (quoting *Woodworker's Supply Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d at 993).

Furthermore,

> "where the exclusion of evidence under Rule 37(c)(1) has the necessary effect of a dismissal, . . . , district courts should, in conjunction with the traditional *Woodworker*'s inquiry, carefully explore and consider the efficacy of less drastic alternatives, ordinarily reserving the extreme sanction of dismissal for cases involving bad faith or willfulness or instances where less severe sanctions would obviously prove futile." *HCG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017).

In this case:

1) **There was no surprise** to the Defendants when they received the Appellant's belated disclosures – the Defendants already had all of those documents and knew about all of those witnesses;

2) **All possible prejudice** arising from the belated disclosure **could easily have been completely eliminated** by simply granting the Appellant's unopposed Motion to Amend the Scheduling Order;

3) **There was no disruption to the "trial"** – nor would there be to the case as a whole at all – as long as the unopposed Motion to Amend Scheduling Order were granted so as to ameliorate any prejudice; and

4) There was **no evidence of wilfulness or bad faith** on the Appellant's part whatsoever.

Because none of these factors are met, the imposition of the ultimate sanction – dismissal – was not warranted under the circumstances and was legally incorrect and an abuse of discretion.

6. Mrs. Segota Will Rely On Her Opening Brief With Respect to the Bulk of the Appellees' Opposing Brief

Mrs. Segota believes that the arguments in her Opening Brief are sufficient to deal with the bulk of the arguments in the Appellees' opposing brief and will rely on said Opening Brief with respect thereto.

Conclusion

For the reasons set forth above and in Mrs. Segota's Opening Brief, this Court should:

1. Reverse the order denying Appellant's Motion to Amend Scheduling Order and direct the Trial Court to set a new, equitable schedule for this case;

2. Reverse the order denying the Appellant's various motions for enlargement to oppose the Defendants' motions for summary judgment;

3. Reverse the ruling that the Appellant's opposing memoranda were late and

would not be considered;

4. Reverse the rulings (a) that the Defendants' motions for summary judgment were unopposed, (b) that the Defendants' motions were not defective and (c) that granted said motions – and upon remand direct the Trial Court to deny said motions for summary judgment;

5. Reverse the Order dismissing Plaintiff/ Appellant's claims and complaint herein against the Defendants – thereby reinstating this case.

DATED this 24th day of January, 2020.

/s/ Brian W. Steffensen

Certificate of Compliance

This brief complies with the page and words limits of URAP 24(g). It contains 1437 words.

This brief complies with the requirements of URAP 21 governing public and private records.

This brief complies with typeface limitations of URAP 27. It is printed in Times New Roman 14 pt font.

/s/ Brian W. Steffensen

I hereby certify that on this 24th day of January, 2020, I caused a true and correct copy of Appellant's Reply Brief to be served via email, and two hard copies to be mailed, to Nicholas Hart, attorney for Young 180 and Nationwide Insurance.

/s/ Brian W. Steffensen